

April 25, 2013

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Re: **Informal Complaint – CG Docket Nos. 03-123, 10-51**  
**Purple Communications, Inc.**

Dear Ms. Dortch:

Purple Communications, Inc. (“Purple”) hereby files this informal complaint against Sorenson Communications, Inc. (“Sorenson”)<sup>1</sup> with respect to Sorenson’s practice of configuring its Video Relay Service (“VRS”) and corresponding equipment to block consumers from leaving video mail messages through point-to-point calls using a competing service. Sorenson is the dominant provider of VRS, and controls over 80% of the VRS market. On March 29, 2013, Purple notified Sorenson that Purple’s customers are unable to leave video mail messages for any consumers using a Sorenson device.<sup>2</sup> In response, Sorenson’s representative informed Purple on April 2, 2013, that Sorenson’s system does not allow consumers using competing devices to leave video mail messages, and that Sorenson’s blocking of messages from consumers using competing providers “is working as anticipated.”<sup>3</sup>

As discussed in Purple’s Request for Immediate Public Notice, Sorenson’s practice of blocking consumers from leaving video mail messages using a competing service violates the Congressional directive set forth in Section 225 of the Communications Act, and the Commission’s implementing rules.<sup>4</sup> Moreover, it violates fundamental principles of fair competition and functional equivalence. Accordingly, Purple respectfully requests that the Enforcement Bureau investigate and impose appropriate sanctions against Sorenson to ensure that the company discontinues this anticompetitive practice.<sup>5</sup>

---

<sup>1</sup> Sorenson’s corporate office is located at 4192 South Riverboat Road, Salt Lake City, Utah, 84123.

<sup>2</sup> See Declaration of Ruben Alanis, ¶ 2, dated April 25, 2013 (“Alanis Declaration”) at Exhibit 1.

<sup>3</sup> See Alanis Declaration, ¶¶ 3-4.

<sup>4</sup> See Purple’s Request for Immediate Public Notice: VRS Providers May Not Discriminate Against Consumers Using Competing Service Providers in Their Ability to Leave a Video Mail Message, CG Docket Nos. 10-51 and 03-123, filed April 11, 2013.

<sup>5</sup> Purple’s preferred format of response to this complaint by the Commission and Sorenson is a letter response.

In support of Purple's complaint, the Declaration of Ruben Alanis, Purple's Director of Test and Configuration Management, is attached hereto as Exhibit 1. Additionally, to provide further background, a copy of Purple's Request for Immediate Public Notice is attached hereto as Exhibit 2.

Respectfully submitted,



---

John Goodman  
Chief Legal Officer  
Purple Communications, Inc.  
595 Menlo Drive  
Rocklin, CA 95765

cc:

Robert Aldrich  
Priscilla Delgado Argeris  
Nicholas Degani  
Eliot Greenwald  
Rick Hindman  
Gregory Hlibok  
Angela Kronenberg  
Sharon Lee  
Kris Monteith  
Karen Strauss

# Exhibit 1

## DECLARATION UNDER PENALTY OF PERJURY

I, Ruben Alanis, hereby declare under penalty of perjury that the following is true and correct to the best of my knowledge and belief:

1. I am a Director of Test and Configuration Management for Purple Communications, Inc. ("Purple").
2. On March 29, 2013, I notified Scot Brooksby of Sorenson Communications, Inc. ("Sorenson"), that Purple consumers are unable to leave a video mail message for any consumer who uses a Sorenson device.
3. On April 2, 2013, Mr. Brooksby informed me that Sorenson's system does not allow consumers using competing devices to leave video mail messages.
4. Mr. Brooksby states that Sorenson's blocking of messages from consumers using competing providers "is working as anticipated."
5. I am not aware of any other VRS provider preventing consumers from leaving video mail messages based on that consumer's choice of service provider, or preventing any of their own customers from receiving video mail messages based on the calling party's choice of provider.

Executed on this 25 day of April 2013.

Ruben Alanis  
Ruben Alanis

## Exhibit 2

**Before the  
FEDERAL COMMUNICATIONS COMMISSION**

**Washington, D.C. 20554**

---

In the Matter of

Purple Communications, Inc.

Request for Immediate Public Notice

---

)  
) CG Docket No. 10-51  
)  
) CG Docket No. 03-123  
)  
)

To: The Commission

**Request for Immediate Public Notice: VRS Providers May Not Discriminate  
Against Consumers Using Competing Service Providers  
In Their Ability to Leave a Video Mail Message**

Purple Communications, Inc. ("Purple"), respectfully petitions the Federal Communication ("Commission" or "FCC") to reiterate consumer rights with respect to a narrow issue with significant implications for consumers using Video Relay Service ("VRS").

Specifically, Purple requests the Commission to issue an immediate Public Notice warning that any VRS provider that configures its service and corresponding equipment to block a consumer from leaving a video mail message through a point-to-point call using a competing service must immediately end that practice. It is obvious that consumers must be able to receive and leave video mail messages irrespective of the default provider of the calling and called party, and providers cannot take discriminatory actions against consumers based on their choice of default provider. Any provider engaging in such discriminatory and anticompetitive practices must be subject to swift enforcement action.

## I. BACKGROUND

Telecommunications Relay Service (“TRS”) is mandated by Title IV of the Americans with Disabilities Act (ADA) of 1990,<sup>1</sup> and enables an individual with a hearing or speech disability to communicate by telephone with a person without such a disability. Congress created TRS through Title IV of the Americans with Disabilities Act, recognizing the crucial need to break down the barriers experienced by persons with hearing and speech disabilities when accessing and using telecommunications services.<sup>2</sup> The program is intended to ensure that TRS “give[s] persons with hearing or speech disabilities ‘functionally equivalent’ access to the telephone network.”<sup>3</sup>

When a TRS call is made through the assistance of an interpreter, the TRS provider is reimbursed for that call through the TRS Fund (“Fund”). Consumers may also use TRS equipment to communicate directly with each other, without the assistance of an interpreter. While such “point-to-point” calls made directly between consumers are not reimbursed through the Fund, they have been recognized by the FCC as an important means to ensure “greater protection for TRS users’ safety, life, health, and property.”<sup>4</sup>

If a deaf person is contacted through VRS but does not answer their video phone, the calling party may leave a video mail message, similar to an answering machine message. Such messages may be left whether through a VRS interpreter, or through direct point-to-point communications. So for example, in

---

<sup>1</sup> Pub. L. No. 101-336, § 401, 104 Stat. 327, 336-69 (1990), adding Section 225 to the Communications Act of 1934; *see also* 47 U.S.C. § 225.

<sup>2</sup> 47 USC § 225(a)(3). VRS is an Internet-based form of TRS.

<sup>3</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Notice of Proposed Rulemaking, FCC 98-90, 13 FCC Rcd 14187, ¶ 6 (1998); *see generally* 47 U.S.C. § 225(a)(3).

<sup>4</sup> *Structure And Practices Of The Video Relay Service Program; Telecommunications Relay Services And Speech-To-Speech Services For Individuals With Hearing And Speech Disabilities*, CG Docket Nos. 10-51 and 03-123, Further Notice Of Proposed Rulemaking, FCC 11-184, 26 FCC Rcd 17367, ¶ 17 (2011)(2011 VRS FNPRM), quoting Letter from Tamar E. Finn and Brett P. Ferenchak, counsel to Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 03-123 and 10-51, at 7 (filed Apr.12, 2011) (*Consumer Groups’ TRS Policy Statement*).

the point-to-point context, a deaf consumer can make a direct call to another deaf consumer, and if the called party does not answer, the calling party can leave a video message.

Sorenson Communications, Inc. is the dominant provider of VRS, and controls over 80% of the VRS market. When any registered customer of Purple makes a point-to-point call to a Sorenson customer, Sorenson will not allow the calling party to leave a video mail message. This blocking of calls is contrary to Congressional directive and FCC rules. Moreover, it violates fundamental principles of fair competition and functional equivalence.

## **II. BLOCKING CONSUMERS FROM LEAVING VIDEO MAIL MESSAGES VIOLATES CONGRESSIONAL DIRECTIVE AND FCC POLICY.**

Section 225 sets forth several fundamental principles governing the provision and regulation of TRS, with functional equivalency operating as the cornerstone.<sup>5</sup> In the most recent *VRS Further Notice on Proposed Rulemaking*, the Commission specifically states that its goal is to ensure that VRS provides functionally equivalent communications services to its users.<sup>6</sup> Functional equivalence is an important benchmark to ensure that TRS users have the ability to access the telephone system in a manner that approximates, as closely as possible, the experience of a voice telephone user.<sup>7</sup> To this end, the Commission has already made clear that “blocking”

---

<sup>5</sup> Section 225, as amended by Section 103(a) of the Twenty First Century Communications and Video Accessibility Act of 2010, defines TRS as “telephone transmission services that provide the ability for an individual who is deaf, hard of hearing, deaf-blind, or who has a speech disability to engage in communication by wire or radio with one or more individuals, in a manner that is functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communication services by wire or radio.” 47 U.S.C. § 225(a)(3)(2010)(emphasis added).

<sup>6</sup> See 2011 VRS FNPRM, FCC 11-184, ¶ 1.

<sup>7</sup> See *id.*, ¶ 85.



practices violate the principle of functional equivalence and are therefore inconsistent with

Section 225.<sup>8</sup> In the *2006 VRS Interoperability Declaratory Ruling*, the Commission stated:

In sum, consistent with functional equivalency, all VRS consumers must be able to place a VRS call through any of the VRS providers' service, and all VRS providers must be able to receive calls from, and make calls to, any VRS consumer. Therefore, a provider may not block calls so that VRS equipment cannot be used with other providers' service. In addition, a provider may not take other steps that restrict a consumer's unfettered access to other providers' service. This includes the practice of providing degraded service quality to consumers using VRS equipment or service with another provider's service. Finally, new providers seeking to offer service have the burden of ensuring that their service is interoperable with existing providers' service.<sup>9</sup>

Obviously, restricting the ability of customers from competing VRS providers to leave video mail messages impermissibly "restricts a consumer's unfettered access to other providers' service" and therefore violates the *Interoperability Declaratory Ruling* and the functional equivalency mandate of Section 225.

#### **A. Interoperability Is Required for Functional Equivalence**

The Commission has made clear that two criteria are essential for interoperability: the ability of a VRS user to (1) freely connect to and communicate through any of several VRS providers, and (2) directly connect to and communicate with other individuals using various forms of VRS access technology.<sup>10</sup> To ensure interoperability, equipment distributed by a certified VRS provider must be interoperable with the technology of other certified VRS

---

<sup>8</sup> See *TRS Declaratory Ruling and FNPRM Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling and Further Notice of Proposed Rulemaking, FCC 06-57, 21 FCC Rcd 5442 (2006) (*Interoperability Declaratory Ruling*).

<sup>9</sup> *Interoperability Declaratory Ruling*, FCC 06-57, ¶ 34 (emphasis added).

<sup>10</sup> 2011 VRS FNPRM, FCC 11-184, Appendix B, ¶ 4.

providers.<sup>11</sup> This is important so that TRS users have broad access and choice in the same way that their hearing counterparts do. The Commission has stated that its interoperability rules are specifically intended to “ensure that VRS users can make point-to-point calls to all other VRS users, irrespective of the default provider of the calling and called party.”<sup>12</sup>

As the Commission has recognized, not only is interoperability necessary for access and choice, but blocking practices can have catastrophic consequences in emergency situations.<sup>13</sup> As a result, the Commission has concluded “that it is essential to ensure that VRS consumers are not dependent on services of a single provider in the event of an emergency.”<sup>14</sup> Here, however, if one VRS user is unable to leave a message to another VRS user simply because they do not share the same service provider, they will completely be shut out of leaving a message which might contain crucial information, particularly in times of an emergency.

Furthermore, Congress has made clear that providers of telecommunications services have a duty not to install network features, functions, or capabilities that impede accessibility or usability.<sup>15</sup> By blocking video mail messages from competitors, Sorenson violates this duty and Commission policies on open access and interoperability.<sup>16</sup>

---

<sup>11</sup> FCC’s VRS Fact Sheet, available at <http://www.fcc.gov/guides/video-relay-services>.

<sup>12</sup> 2011 VRS FNPRM, FCC 11-184, ¶ 16 (citing 47 CFR 64.611(e)).

<sup>13</sup> See *id.*, stating that “full interoperability, including the ability to make point to point calls, ‘ensures greater protection for TRS users’ safety, life, health, and property.” See also *Twenty-First Century Communications and Video Accessibility Act of 2010*, Pub. L. No. 111-260, 124 Stat. 2751, § 106 (2010) (CVAA)(emphasizing the critical importance of interoperability as it relates to public safety).

<sup>14</sup> See *Interoperability Declaratory Ruling*, FCC 06-57, ¶ 36.

<sup>15</sup> See also CVAA, § 104 enacting § 716(d) of the Communications Act.

<sup>16</sup> See *Interoperability Declaratory Ruling*, FCC 06-57, at n. 136 stating that “the Commission has repeatedly adhered to policies favoring open access to networks and interoperability of

**B. Point-to-Point Calling is Critical, Including the Ability to Leave Messages**

Point-to-point calls, while not compensable from the Fund, nevertheless “constitute an important form of communication for many VRS users, and any loss of such basic functionality is simply not acceptable.”<sup>17</sup> The Commission has affirmed its authority to regulate such point-to-point calls, noting that “requiring that providers facilitate point-to-point communications between persons with hearing or speech disabilities is reasonably ancillary to the Commission’s responsibilities in several parts of the Act – sections 225, 255, and 1.”<sup>18</sup> And, the Commission has emphasized that facilitating point-to-point calls furthers the purposes of section 225 by making “available to all individuals in the United States a rapid, efficient nationwide communication service, and to increase the utility of the telephone system of the Nation.”<sup>19</sup>

While Section 225 is specific to relay services, point-to-point services even more directly support Congressional directives: point-to-point calls are more rapid in that they involve direct, rather than interpreted, communication; they are more efficient in that they do not trigger the costs involved with interpretation or unnecessary routing; and they increase the utility of the

---

terminal equipment. For example, in the context of connecting terminal equipment to the telephone network, the Commission has promulgated a series of rules to ensure open access and interoperability. *See* 47 C.F.R. § 68.1 et seq. Moreover, policies of open access and interconnection were fundamental to the Telecommunications Act of 1996. For example, Section 251 provides a duty of telecommunications carriers to interconnect with other carriers and ‘not to install network features, functions, or capabilities that do not comply with the guidelines and standards established pursuant to Section 255 (Access by Persons with Disabilities).’ 47 U.S.C. § 251(a)(1) & (2)’.

<sup>17</sup> *Second Internet-based TRS Order Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123; *E911 Requirements for IP-Enabled Service Providers*, WC Docket No. 05-196, Second Report and Order and Order on Reconsideration, FCC 08-275, 24 FCC Rcd 791, ¶ 65 (Dec. 19, 2008)(2008 *Second Internet-based TRS Order*).

<sup>18</sup> *Id.*, ¶ 66.

<sup>19</sup> *Id.*, ¶ 67 (citing 47 U.S.C. § 225 (b)(1)).

Nation's telephone system in that they provide direct communication – including all visual cues that are so important to persons with hearing and speech disabilities.<sup>20</sup> And, requiring point-to-point communications capabilities serves Congress's goals of ensuring telecommunications is accessible and usable to people with disabilities.<sup>21</sup> Finally, the Commission has underscored that facilitating direct communication – without an unnecessary third-party interpreter – between citizens with hearing or speech disabilities furthers the Commission's mandate to make communications available to "all the people."<sup>22</sup>

Based on this authority and the recognized importance of point-to-point video calling, the Commission recently declined a proposal from Sorenson which, according to Sorenson's own admission, would restrict point-to-point video calls to toll free numbers so that a deaf person could not call another deaf person's toll free number directly.<sup>23</sup>

### **C. Blocking Video Mail Messages Impedes Competition and Harms Consumers**

Blocking video mail messages from competing customers is at odds with the Commission's emphasis on prohibiting impediments to broad accessibility<sup>24</sup> and fostering

---

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* (emphasis omitted).

<sup>23</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, E911 Requirements for IP-Enabled Service Providers, Internet-Based Telecommunications Relay Service Numbering*, CG Docket No. 03-123, WC Docket No. 05-196, WC Docket No. 10-191, Order on Reconsideration, FCC 12-139, 27 FCC Rcd 14590, ¶ 10 (2012) (*2012 Sorenson Order on Reconsideration*).

<sup>24</sup> CVAA, at § 104 enacting § 716(d) to Title VII of the Communications Act of 1934 (47 U.S.C. 601 *et seq.*). See also *supra* n. 16.

competition in the VRS industry.<sup>25</sup> The Commission has already expressed concern over the idea that “VRS users may not be able to enjoy the benefits of non-price competition between multiple providers if, in fact, switching costs are so high that there is little prospect that consumers will actually switch default providers.”<sup>26</sup> Because Sorenson controls over 80% of the VRS market,<sup>27</sup> Sorenson is effectively trying to make it harder for its users to switch providers – after all, if a user opted to leave Sorenson, he or she would be prevented from leaving messages to 80% of the VRS market.

This is not the first time that Sorenson has used its dominant position to engage in practices that violate the principles and requirements of Section 225 and Commission policies designed to protect VRS users. Instead, Sorenson has engaged in a series of anti-competitive actions – threatening equipment removal and unauthorized porting, delaying action on deployment of bug fixes, instituting non-compete clauses for interpreters, removing of address books as a porting disincentive, using intercept messages with thinly veiled threats of degraded service on calls made through other providers, and failing to properly pass through Caller ID

---

<sup>25</sup> This is consistent with the goal expressed by the Consumer Groups to ensure “intense competition among a number of qualified vendors in the telecommunications relay services market to give the TRS user population a range of choices in features and services . . . .” *See* 2011 VRS FNPRM, FCC 11-184, ¶ 14 (quoting Consumer Groups’ TRS policy Statement at 9).

<sup>26</sup> *See* 2011 VRS FNPRM, FCC 11-184, ¶ 18.

<sup>27</sup> As Purple has previously pointed out to the Commission, it is important to remember that Sorenson did not achieve its substantial market dominance from mere efficiency and quality of service. Instead, Sorenson entered the VRS market in the spring of 2003 with an integrated, yet restricted, equipment-service tie-in arrangement which the FCC eventually prohibited and found inconsistent with long-standing FCC policies on open network architecture, equipment interoperability and consumer choice in service.” *See e.g.*, Comments filed by Purple Communications Inc. in CG Docket No. 10-51 dated August 18, 2010 at 6.

information to non-Sorenson users – all of which have been designed to keep its customers locked in as a way protect its dominance.<sup>28</sup> This type of behavior has been an ongoing pattern.

### III. CONCLUSION

Targeted VRS message blocking punishes the consumer attempting to leave the message and the customer who otherwise would receive the message. The Commission should issue an advisory notifying providers engaging in such behavior to immediately stop. A concurrent enforcement action will demonstrate the Commission's commitment to its prior admonitions "that to receive compensation from the Fund a company must allow full unrestricted access to this nation's communications network."<sup>29</sup> Now is the time for the Commission to make clear that deaf and hard of hearing VRS users have the same rights to be free of unreasonable and

---

<sup>28</sup> See e.g. Letter from Monica Desai, Counsel, Purple Communications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, CG Docket No. 03-123, dated March 1, 2013 (describing Sorenson's use of non-compete clauses for its interpreters, disallowing address book exportability and other examples of anti-competitive practices); see also *Reply Comments To Public Notice On Structure And Practices of the Video Relay Services Program*, filed by Purple Communications, Inc. in CG Docket No. 10-51 and CG Docket No. 03-123, dated November 29, 2012 at 10 (stating that the Commission's Enforcement Bureau has received multiple complaints from VRS users, as well as smaller providers, detailing an alleged pattern of abusive and manipulative practices employed by Sorenson in the field); Comments filed by Purple Communications Inc. in CG Docket No. 03-123 dated Oct. 19, 2009 at 6 (describing that because there was no way to port a Sorenson device and because Sorenson has made it clear it would de-feature any device ported, virtually all persons with a Sorenson device also kept Sorenson as their default provider); see also *Reply to Opposition to Request for Clarification of Declaratory Ruling* filed by Hands On Video Relay Services, Inc. in CG Docket 03-123 dated August 25, 2006 (describing Sorenson's use of an intercept message as an impermissible impediment to VRS users' ability to switch providers); *Request For Cease And Desist Order or Other Enforcement Action To Compel Sorenson Communications, Inc. Compliance With The Interoperability Order* filed by CSDVRS, LLC, Purple Communications, Inc. and Snap Telecommunications, Inc. in CG Docket No. 03-123 and WC Docket No. 05-196, dated June 15, 2009 (describing Sorenson's intentional unwillingness to properly pass through Caller ID information of non-Sorenson users).

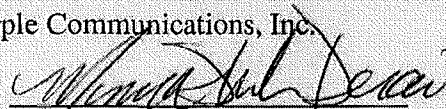
<sup>29</sup> See *Interoperability Declaratory Ruling*, FCC 06-57, ¶ 40.

discriminatory practices as do hearing individuals and hold Sorenson accountable for its knowing and willful disregard of those rights.

Respectfully submitted,

Purple Communications, Inc.

By:



Monica Desai

Patton Boggs LLP

2550 M Street NW

Washington, DC 20037

(202) 457-6000

*Counsel for Purple Communications, Inc.*

Dated: April 11, 2013